

Application No. 09/944668
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Amendment
Attorney Docket No. S63.2B-9867-US01

Remarks

This Amendment is in response to the Office Action dated **February 6, 2006**. Claims 1-4, 6-10, 14, 15, 38, 41, 42, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Claims 30, 33, 34, and 44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kocur '649 in view of U.S. Patent No. 5,843,158 to Lenker et al. Claims 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al. Claims 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of Lenker et al. and further in view of Lock et al. These rejections are addressed under headings consistent with the headings of the Office Action. Claims 1, 30, and 38 have been amended. The amendments of these claims at least finds support in Fig. 9 of the drawings. No new matter has been added.

35 USC § 102

In the Office Action claims 1-4, 6-10, 14, 15, 38, 41, 42, and 45 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al. Amended claim 1 and 38 teach that the thickness of a portion of the temporary strut is substantially narrower than the thickness of any other portion of the temporary strut. Kocur does not teach the limitations of the amended claims. For at least this reason amended claims 1 and 38 and those claims dependent thereof are believed to be in condition for allowance.

Applicant respectfully requests that the 102 rejection in light of Kocur be withdrawn.

35 USC § 103

In the Office Action, claims 30, 33, 34, and 44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kocur '649 in view of U.S. Patent No. 5,843,158 to Lenker et al. Claim 30 has been amended to recite "the thickness of a portion of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut".

The Office Action acknowledges that Kocur does not disclose restraining

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members being made of metal. In addition, as asserted above, Kocur does not teach nor does Kocur suggest the narrower portions as claimed in amended claim 30. For at least this reason, Applicant respectfully requests that the 103(a) rejection of claim 30 and claims 33, 34, and 44 dependent thereof be withdrawn.

Claims 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al. Claims 11-13 claim dependence from independent claim 1 which recites "the thickness of a portion of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut". Kocur does not teach this missing limitation nor can one look to Locke to supply a teaching or suggestion of this missing limitation. For at least this reason, claims 11-13 are allowable as they claim dependence on claim 1 which is believed to be in condition for allowance. Applicant respectfully requests that the 103(a) rejection of claims 11-13 be withdrawn.

Claims 35-37 and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of Lenker et al. and further in view of Lock et al. Claims 35-37 claim dependence from independent claim 30 and are believed to be in condition for allowance. Applicant respectfully requests that the 103(a) rejection of claims 35-37 be withdrawn.

Claim 39-40 claim dependence from independent claim 38. Claims 38 recites "the thickness of a portion of the temporary strut being substantially narrower than the thickness of any other portion of the temporary strut". Kocur does not teach this missing limitation nor can one look to Lencker to supply a teaching or suggestion of this missing limitation. For at least this reason, claims 39-40 are allowable as they claim dependence on claim 38 which is believed to be in condition for allowance. Applicant respectfully requests that the 103(a) rejection of claims 39-40 be withdrawn.

Applicant respectfully requests that the 103(a) rejection of claims 35-37 and 39-40 be withdrawn.

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CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 1-15, 30, 33-42, 44, and 45, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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